

1 EDMUND G. BROWN JR.
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MICHAEL S. COCHRANE
Deputy Attorney General
4 State Bar No. 185730
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2074
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY &**
11 **HEARING AID DISPENSERS BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 11-2007-34

15 DENNIS MARTIN NAPOLI, SLP
4012 Winterhaven Street
Yorba Linda, CA 92886

ACCUSATION

16 Speech Language Pathologist License
No. SP 3340,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Annemarie Del Mugnaio (Complainant) brings this Accusation solely in
22 her official capacity as the Executive Officer of the Speech-Language Pathology & Audiology &
23 Hearing Aid Dispensers Board, Department of Consumer Affairs.

24 2. On or about August 20, 1978, the Speech-Language Pathology &
25 Audiology & Hearing Aid Dispensers Board (Board) issued Speech Language Pathologist
26 License Number SP 3340 to Dennis Martin Napoli, SLP (Respondent). The Speech Language
27 Pathologist License was in full force and effect at all times relevant to the charges brought herein
28 and will expire on October 31, 2011, unless renewed.

FILED - STATE OF CALIFORNIA
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board
Sacramento, California on September 28, 2010

By Cynthia Alameda

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2531.5 of the Code provides that the Board shall issue, suspend, and revoke licenses and approvals to practice speech-language pathology and audiology as authorized by Chapter 5.3 of the Code.

5. Section 2533 of the Code states, in pertinent part:

"The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct shall include, but shall not be limited to, the following:

"...

"(f) Incompetence or gross negligence in the practice of speech-language pathology or audiology.

(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public."

6. California Code of Regulations, Title 16, section 1399.156, states, in pertinent part:

"Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited to the following:

"...

"(c) Incompetence or negligence in the practice of speech-language pathology or audiology which has endangered or is likely to endanger the health, welfare, or safety of the public."

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COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . , the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

“(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

“(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

“(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

“(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

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1 “(f) In any action for recovery of costs, proof of the board's decision shall
2 be conclusive proof of the validity of the order of payment and the terms for
3 payment.

4 “(g) (1) Except as provided in paragraph (2), the board shall not renew
5 or reinstate the license of any licentiate who has failed to pay all of the costs
6 ordered under this section.

7 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
8 conditionally renew or reinstate for a maximum of one year the license of any
9 licentiate who demonstrates financial hardship and who enters into a formal
10 agreement with the board to reimburse the board within that one-year period for
11 the unpaid costs.

12 “(h) All costs recovered under this section shall be considered a
13 reimbursement for costs incurred and shall be deposited in the fund of the board
14 recovering the costs to be available upon appropriation by the Legislature.

15 “(i) Nothing in this section shall preclude a board from including the
16 recovery of the costs of investigation and enforcement of a case in any stipulated
17 settlement.

18 “(j) This section does not apply to any board if a specific statutory
19 provision in that board's licensing act provides for recovery of costs in an
20 administrative disciplinary proceeding.”

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Gross Negligence)**

23 8. Respondent is subject to disciplinary action under section 2533, as defined
24 by section 2533, subdivision (f), of the Code, in that he has committed gross negligence or has
25 demonstrated incompetence in the practice of speech language pathology or audiology, as more
26 particularly alleged hereinafter:

27 (a) Patient D.R. was a 7-year-old boy at the time his mother sent him to The
28 Drake Institute for assistance with academic and behavioral problems at school.

1 Professionals at The Drake Institute diagnosed patient D.R. with Attention
2 Deficit/Hyperactivity Disorder (AD/HD), and rule out diagnoses of depression, academic
3 problems, and primary support problems. The Drake Institute further referred Patient
4 D.R. to respondent for a speech and language assessment.

5 (b) On or about October 30, 2006, respondent performed a speech and
6 language evaluation of patient D.R. Respondent stated in an assessment report dated
7 November 5, 2006, that "[t]he purpose of this comprehensive evaluation was to establish
8 levels of functioning in the areas of receptive and expressive language, semantics,
9 auditory processing, articulatory proficiency, voice and fluency." (Underlining in
10 original). This evaluation consisted of the Lindamood Auditory Conceptualization Test
11 (LAC), the Clinical Evaluation of Language Fundamentals, Fourth Edition (CELF-4), and
12 a spontaneous speech sample. The mother was present during the testing, and
13 respondent's report states that "it was emphasized that this testing procedure was
14 comprehensive in nature." (Underlining in original).

15 (c) Respondent administered the LAC, a test which measures an individual's
16 ability to perceive and conceptualize speech sounds. According to respondent, patient
17 D.R. "achieved a converted score of 93 which showed auditory perceptual abilities to be
18 at the first semester of the sixth grade." Respondent did not describe any of the subtests
19 of the LAC, nor did he report the individual subtest scores. Respondent noted in the
20 "Summary and Discussion" portion of his report that "The results of the LAC test were
21 well above grade level.¹ This would reflect reading and spelling abilities. In this patient's
22 case, the results were probably more reflective of his spelling abilities."

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27 ¹ It is unclear how a standard score of 93, as normed for a 7-year-old second grader
28 examinee, was converted to a sixth grade level, as a standard score of 93 falls below the mean
score of 100.

1 (d) Respondent reported the following scores from the CELF-4: Receptive
2 Language: standard score of 69 (2nd percentile); Expressive Language: standard score of
3 96 (39th percentile); Language Content: standard score of 62 (1st percentile); Language
4 Structure: standard score of 95 (37th percentile); and Core Language: standard score of 84
5 (14th percentile). The Word Classes Expressive Score and the Understanding Spoken
6 Paragraphs Score from the CELF-4 were not included in respondent's evaluation report.
7 Respondent's report includes no description of any of the subtests of the CELF-4.

8 (e) Respondent diagnosed patient D.R. with a "Severe Auditory Processing
9 Disorder" and he "strongly recommended" the Fast Forward Language Program.
10 Respondent's assessment report stated that "The Drake Institute continues to average
11 between two and a half years to three years improvement in conjunction with
12 neurofeedback. The success rate has been a little better than 88%."

13 (f) In a separate, undated letter to patient D.R.'s mother, respondent stated that
14 "[t]he results of that testing clearly showed a processing disorder in the fact that there was
15 a 27 point discrepancy between receptive and expressive language in favor of expressive
16 language." (Original in all capitals). Respondent further stated that the low receptive
17 language score (2nd percentile) "was due primarily to [D.R.'s] low vocabulary
18 development and poor understanding of basic concepts and his inability to follow multiple
19 directions." (Original in all capitals). Respondent further stated that his diagnosis of a
20 processing deficit was confirmed by a 33-point discrepancy between the Language
21 Content and Language Structure subtests of the CELF-4.

22 (g) Respondent stated in the undated letter that he did not refer patient D.R. to
23 an audiologist because D.R.'s mother indicated that patient D.R. did not have a history of
24 otitis media, tinnitus (ringing in the ears), or vertigo (dizziness), the mother reported that
25 developmental milestones, including speech and language developmental milestones were
26 unremarkable, patient D.R.'s articulatory performance and intelligibility of spontaneous
27 speech were unremarkable, the LAC testing was within normal limits.

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1 (h) Respondent further stated in his undated letter, "In closing, my role at The
2 Drake Institute is to identify through the use of the medical director's input, the program
3 coordinator's input, parental intake, patient intake, administration of diagnostic tests that
4 have the highest test-retest reliability and validity to recommend when appropriate the
5 FastForward Program. . ." (Original in all capitals, underlining in original).

6 (i) Respondent's report did not include any reference to patient D.R.'s
7 diagnosis of AD/HD, any prior hearing testing, any academic testing, any school grades,
8 whether patient D.R. had ever been assessed for special education eligibility, or a review
9 of any hearing/audiology testing or screenings performed on patient D.R.

10 (j) Respondent committed gross negligence or demonstrated incompetence in
11 the practice of speech language pathology or audiology, which included, but was not limited to,
12 the following:

13 (1) Respondent diagnosed patient D.R. with a severe auditory processing
14 disorder without adequate information to make the diagnosis;

15 (2) Respondent diagnosed patient D.R. with a severe auditory processing
16 disorder without first attempting to rule out other possible diagnoses, including, but not
17 limited to, the patient's prior diagnosis of AD/HD, and possible hearing loss, that could
18 have contributed or caused patient D.R.'s receptive language deficits as measured by the
19 CELF-4;

20 (3) Respondent failed to perform an audiology assessment, attempt to obtain
21 prior audiology testing, or to refer patient D.R. to an audiologist for testing, prior to
22 concluding that the patient had a severe auditory processing deficit;

23 (4) Respondent performed an inadequate history of the patient D.R.;

24 (5) Respondent failed to administer all of the regular subtests of the CELF-4,
25 and did not report any of the subtest scores from the LAC;

26 (6) Respondent failed to cross-validate areas of weakness identified on the
27 CELF-4 with other testing;

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1 (7) Respondent recommended the FastForward program for treatment of an
2 auditory processing disorder without performing any assessment to determine whether
3 patient D.R.'s symptoms of weak receptive language skills were the result of a processing
4 disorder;

5 (8) Respondent made recommendations and conclusions regarding patient
6 D.R.'s reading and spelling skills, without performing any reading or academic
7 assessment, and without reviewing any test data measuring his reading or academic
8 performance;

9 (9) Respondent recommended that it was "imperative" that the patient D.R.
10 follow the "Medical Director's prescribed intervention" and the "Program Coordinator's
11 prescribed intervention"² without stating what those interventions were, and without
12 having reviewed the reports from The Drake Institute or any other professional to know
13 what interventions he was recommending as imperative to follow;

14 (10) Respondent failed to recommend that patient D.R.'s parent request that
15 patient D.R. be assessed for eligibility for special education or for a Section 504
16 Accommodation Plan at patient D.R.'s public school; and

17 (11) Respondent made a diagnosis of a severe auditory processing deficit based
18 on patient D.R.'s performance on the CELF-4, which is not a test of auditory processing.

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20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Other Acts Likely to Endanger the
22 Health, Welfare, or Safety of the Public)**

23 16. Respondent is further subject to disciplinary action under section 2533, as
24 defined by section 2533, subdivision (g), of the Code, in that he committed other acts that have
25 endangered, or was likely to endanger, the health, welfare, or safety of the public, as more
26 particularly alleged hereinafter:

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28 ² These individuals are presumably employees of The Drake Institute.

1 (a) Paragraph 15, above, is hereby incorporated by reference as if fully set
2 forth herein.

3 (b) Respondent negligently diagnosed patient D.R. with a severe auditory
4 processing disorder, endangering a delay in the assessment or treatment of other possible
5 conditions, including but not limited to, hearing loss or AD/HD.

6 (c) Respondent failed to recommend that patient D.R.'s parents request an
7 evaluation from the public school to determine eligibility for special education
8 interventions or accommodations, endangering patient D.R.'s education and welfare.

9 (d) Respondent recommended FastForward, a time-consuming and expensive
10 therapy designed to treat a severe auditory processing disorder, without first obtaining
11 sufficient information to conclude that the etiology of patient D.R.'s weakness in
12 receptive language was the result of an auditory processing disorder.

13 **PRAYER**

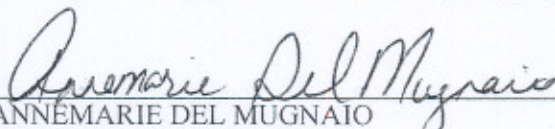
14 WHEREFORE, complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Speech-Language Pathology & Audiology & Hearing
16 Aid Dispensers Board issue a decision:

17 1. Revoking or suspending Speech Language Pathologist License Number SP
18 3340, issued to respondent Dennis Martin Napoli, SLP;

19 2. Ordering respondent Dennis Martin Napoli, SLP, to pay the Speech-
20 Language Pathology & Audiology & Hearing Aid Dispensers Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and

23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: September 28, 2010

25 
ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant